OCT 9 1941
CHARLES ELMORE COOPL
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

# No. 691

THE BRIGHT BROOKS LUMBER COMPANY,
*Petitioner,*

*vs.*

HENRY WEISS, TRUSTEE IN BANKRUPTCY OF JACK W. ROBINSON AND LOUIS DICKMAN, INDIVIDUALLY AND TRADING AS COPARTNERS AS EMERALD FURNITURE MANUFACTURING CO., BANKRUPTS.

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT AND BRIEF IN SUPPORT THEREOF.

CHARLES POLIS,
JACOB K. MILLER,
PAUL BRANDEIS,
*Counsel for Petitioner.*

# INDEX.

## Subject Index.


| | Page |
|---|---|
| Petition for writ of certiorari | 1 |
| Statement of the matter involved | 5 |
| Jurisdiction | 5 |
| Questions presented | 5 |
| Reasons relied on for the allowance of the writ | 6 |
| Brief in support of petition | 8 |
| Opinions of the courts below | 8 |
| Jurisdiction | 8 |
| First specification of error | 8 |
| Summary | 9 |
| Argument | 9 |
| Second specification of error | 11 |
| Summary | 11 |
| Argument | 12 |
| Conclusion | 13 |


## Table of Cases Cited.


| | |
|---|---|
| *Commercial Car Co.* v. *Murphy & Son*, 175 Pa. 105 | 13 |
| *Gallagher* v. *Motors Fin. Corp.*, 105 Pa. Sup. Ct. 335 | 7, 13 |
| *General Motors Acct. Corp.* v. *Hartman*, 114 Pa. Sup. Ct. 544 | 6 |
| *General Motors Acc. Corp.* v. *Horton*, 85 F. (2d) 452 | 6, 9 |
| *Jacquard Knitting Mch. Co.* v. *Vennell*, 59 F. (2d) | |
| *Riccardi Motor Car Co.* v. *Weinstein*, 98 Pa. Sup. 496 | 6, 10 |
| *Kindig* v. *Wertz*, 116 Pa. Sup. Ct. 456 | 7, 13 |
| Ct. 41 | 7, 13 |
| *Styles* v. *Seaton*, 200 Pa. 114 | 6, 11 |


## Statutes Cited.


| | |
|---|---|
| Bankruptcy Act, Sec. 70(e) | 13 |
| Judicial Code, Sec. 240, as amended (28 U. S. C. 347) | 5, 8 |

SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1941**

---

# No. 691

---

THE BRIGHT BROOKS LUMBER COMPANY,
*Petitioner,*

*vs.*

HENRY WEISS, TRUSTEE IN BANKRUPTCY OF JACK W. ROBINSON AND LOUIS DICKMAN, INDIVIDUALLY AND TRADING AS COPARTNERS AS EMERALD FURNITURE MANUFACTURING CO., BANKRUPTS.

---

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT AND BRIEF IN SUPPORT THEREOF.

---

*To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:*

I.

This Petition for Certiorari arises out of the United States Circuit Court of Appeals for the Third Circuit, which affirmed on the fourteenth day of July, 1941 (R. 167), the judgment of the District Court of the United States for the Eastern District of Pennsylvania in the cause styled

*The Bright Brooks Lumber Company* v. *Henry Weiss, Trustee in Bankruptcy of Jack W. Robinson and Louis Dickman, Individually and Trading as Copartners as Emerald Furniture Manufacturing Co., Bankrupts;* a proceeding in reclamation in the matter of Jack W. Robinson and Louis Dickman, individually and as copartners trading as Emerald Furniture Manufacturing Co., in Bankruptcy, Cause No. 20895, which judgment was rendered on the 13th day of February, 1941 (R. 2).

On May 3, 1939, an involuntary petition in bankruptcy was filed against Jack W. Robinson and Louis Dickman, Individually and as Copartners Trading as Emerald Furniture Manufacturing Co., in the District Court of the United States for the Eastern District of Pennsylvania. On June 30, 1939, Henry Weiss was duly elected Trustee in Bankruptcy and qualified by filing his bond.

The Bright Brooks Lumber Company, a corporation of the State of Georgia, filed with the Referee in Bankruptcy, a petition for an order on said receiver to deliver to the petitioner certain described articles of wood working machinery which had passed into the possession of the Receiver as part of the bankrupts' Estate. An answer was filed by the Trustee in Bankruptcy and after testimony was taken, the Referee on September 21, 1940, dismissed the Reclamation Petition. Thereupon the petitioner filed a petition for a review of the Receiver's order and the questions of fact and law raised by the original petition for reclamation and answer thereto were certified to the District Court of the United States for the Eastern District of Pennsylvania. This controversy involves the unique Pennsylvania law of bailment leases.

The evidence offered to support the appellant's claim is as follows:

In the early part of 1938 (R. 49), Anna Dickman, was engaged in the furniture manufacturing business at 2218

Emerald Street, Philadelphia, having registered under the Fictitious Names Act, as doing business as "EMERALD FURNITURE MANUFACTURING COMPANY" (R. 73). The business was under the management of her husband, Louis Dickman, one of the bankrupts in these proceedings (R. 63, 68). In the conduct of the business, she made large purchases of lumber from the Bright Brooks Lumber Company, the appellant (R. 20), as a result of which she became heavily indebted to that firm (R. 109). Being unable to pay (R. 65), she, on April 6th, 1938, executed to the Bright Brooks Lumber Company and to John Cockey & Sons (R. 21, 22), a Bill of Sale of all of the machinery then in her place of business; and the Bright Brooks Lumber Company and John Cockey & Sons, as Lessors, and Anna Dickman, as Lessee, then concluded a Bailment Lease of the machinery (R. 121, 122), under which she continued to keep possession of the machinery and use it in her business.

Early in June, 1938, Anna Dickman, terminated her interest in the business (R. 31, 32). Then, Louis Dickman and Jack W. Robinson, the bankrupts, formed a partnership (R. 66, 67), and established their place of business at 3112-16 North 17th Street, Philadelphia, where they traded as the "Emerald Furniture Manufacturing Company" (R. 34). At about the same time Dickman and Robinson entered into a contract with the Bright Brooks Lumber Company, wherein the latter agreed to give the Emerald Furniture Mfg. Company certain financial assistance (R. 33). The machinery was then, at the appellant's request (R. 133), moved from Emerald Street to North 17th Street, where the partnership continued in business until the latter part of April 1939.

At the time Dickman and Robinson took over the business and the possession of the machinery, it was the intention of the parties to conclude a "written" bailment lease similar to that executed by Anna Dickman, and a draft of same

was given to J. Hector McNeal, Esq., to prepare a suitable agreement (R. 121, 129).

Shortly after the business was moved to North 17th Street, the Bright Brooks Lumber Company purchased certain additional machinery from one, Alfred S. Knesby, of Upper Darby, Pennsylvania, a deal in woodworking machinery (R. 36). This machinery was delivered by Knesby to the place of business of the Emerald Manufacturing Company on North 17th Street (R. 36, 71). The actual purchase was made by Dickman (R. 35), in the name of the Bright Brooks Lumber Company (R. 71, 79), and pursuant to their authority. The purchase price was paid by the Bright Brooks Lumber Company (R. 37, 43), and the invoices for the machinery were in the name of the Bright Brooks Lumber Company (R. 47, 49). It was the oral agreement between Dickman and Robinson and Cockey, acting as agent for the Bright Brooks Lumber Company that the machinery was to remain the property of the Bright Brooks Lumber Co., under the terms of the agreement of the parties of June 18th, 1938 (R. 40, 106).

Although J. Cockey & Sons, appeared in the various instruments, above referred to, as co-owner of all this machinery with the Bright Brooks Lumber Company, Cockey has since acknowledged that he has no proprietary interest in it and has since quit-claimed all of his rights in favor of the Bright Brooks Lumber Company (R. 45, 46, 47, 132).

On April 24th, 1939, Dickman and Robinson, trading as the Emerald Furniture Manufacturing Company, executed a written and general assignment of all of their assets, for the benefit of creditors (R. 91, 96).

Upon the petition and answer, considerable testimony was taken before the Referee who entered an order dismissing the petition (R. 155). Thereupon, the petitioners filed a request for a review and the matter was, in due

course, argued before Ganey, J., who dismissed the petition for a review and sustained the Referee (R. 155).

II.

The Supreme Court of the United States has jurisdiction to review the judgment of the United States Circuit Court of Appeals for the Third Circuit on petition for certiorari by virtue of Section 240, as amended, of the Judicial Code (Sec. 347, Tit. 28, U. S. C. A.), and by court Rule 38 (5b) of the rules of the Supreme Court of the United States, 1939, the decisions of the Circuit Court of Appeals being in conflict with the decisions of the Supreme and Superior Courts of the Commonwealth of Pennsylvania, being the courts of last resort in said State. The decision of the Circuit Court involves the important question of Pennsylvania personal property law.

III.

The questions presented by the petitioner are:

(a) Where the owner of chattels transfers title in them to a creditor as security for payment of a debt and enters into a bailment lease with the creditor, whether such a transaction is valid in law, *inter parties.*

(b) Where one having title in chattels directs the bailee of same to deliver them to another, after which a bailment contract is executed between the owner of the legal title and the new bailee, whether such a transaction is valid, *inter parties.*

(c) Where one purchases chattels and directs the vendor to deliver them to another, after which a bailment agreement is executed between the owner of the legal title and the bailee, whether such a transaction is valid, *inter parties* and as to third parties.

(d) Where the owner of chattels and the bailee of same enter into a written agreement whereby possession is retained by the bailee under an agreement to pay rental for use, and contains a stipulation that the bailee may purchase the chattels upon payment of a specific sum, whether such a transaction is a bailment or a sale.

## IV.

The reasons relied on for the allowance of the writ are as follows:

(1) The decision of the Circuit Court of Appeals adopting *per curiam* the decision of the District Court of the United States for the Eastern District of Pennsylvania held that the instrument executed between the petitioner and the bankrupts is not a bailment lease but a conditional sale and thus invalid for want of recording. This conclusion is contrary to the following decisions of the Supreme and Superior Courts of the Commonwealth of Pennsylvania and of prior decisions of the Circuit Court of Appeals for the Third Circuit: *General Motors Acc. Corp.* v. *Hartman,* 114 Pa. Sup. Ct. 544; *Styles* v. *Seaton,* 200 Pa. 114; *General Motors Acc. Corp.* v. *Horton,* 85 F. (2d) 452; *Jacquard Knitting Mch. Co.* v. *Vennell,* 59 F. (2d) 496.

In all of these cases, it was held that where there was an express reservation of title of a chattel in possession of another and the parties have expressed their intention to create a bailment, the relation of bailor and bailee exists and not that of conditional vendor and vendee and that the retention of title is valid as against the attack of creditors of all *bona fide* purchasers from the bailee.

(2) The decision of the Circuit Court of Appeals, adopted *per curiam,* a decision of the District Court which held that a transaction evidenced by an agreement purporting to be a bailment was, nevertheless, invalid for the reason that

there was not at the time of the execution of the agreement, a change of possession of the chattel. All the uncontradicted evidence disclosed that Anna Dickman was not a member of the partnership and that possession of the chattels in question were delivered to the partnership at the time of the agreement between the parties. The Circuit Court decision is in conflict with the following decisions of the Superior Court of Pennsylvania which have held that a claimant of chattels does not have to prove a title against the whole world but only as to the defendant in the proceedings from whom the Trustee derived his rights: *Kindig* v. *Wertz*, 116 Pa. Sup. Ct. 456; *Gallagher* v. *Motors Fin. Corp.*, 105 Pa. Sup. Ct. 335; *Riccardi Motor Car Co.* v. *Weinstein*, 98 Pa. Sup. Ct. 41.

(3) Each of the above conflicts is on an important question of local law.